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Hand Delivery

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: IVANS, Inc. Request for Review of Decision of the Universal Service Administrator, WC Docket No. 06-122; Request for Confidential Treatment under 47 C.F.R. § 0.459.

Dear Ms. Dortch:

In comments filed in the above referenced proceeding, AT&T Services, Inc. informed the Commission that it would review revenue amounts its affiliate AT&T Corp. derived by selling services to IVANS, Inc. (IVANS) and it would identify the amount of those IVANS-related revenues it reported in its federal universal service contribution base.¹ AT&T Services, Inc. further indicated that it would support those figures with a certification made under penalty of perjury.² Attached to this request for confidential treatment are a certification and a spreadsheet that lists by quarter how much IVANS-associated revenue AT&T Corp. included in its federal USF contribution base.

Pursuant to the Commission's *Confidential Information Order*,³ and in accordance with the Freedom of Information Act (FOIA)⁴ and the Commission's Rules related to public information and inspection of records,⁵ AT&T Services Inc., on behalf of its affiliate AT&T Corp. (collectively, AT&T), requests confidential treatment for the attached spreadsheet.

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

All of the revenue information included on the attached spreadsheet is confidential commercial information under Exemption 4 of the FOIA, 47 U.S.C. § 552(b)(4). Accordingly,

¹ AT&T Comments, WC Docket No. 06-122 (filed Sept. 16, 2013) (AT&T Comments).

² *Id.* at 4.

³ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998) (*Confidential Information Order*).

⁴ 5 U.S.C. § 552.

⁵ *E.g.* 47 C.F.R. §§ 0.457 and 0.459.

pursuant to Commission Rule 0.459(a), AT&T requests that such information not be made routinely available for public inspection.

(2) Identification of the Commission proceedings in which the information was submitted or a description of the circumstances giving rise to the submission.

In comments it filed with the Commission on September 16, 2013, in response to a USF contributor appeal that IVANS filed, AT&T asserted that the Commission should apply its policy that “the same revenue should not be assessed twice for USF contributions purposes” in deciding the IVANS appeal and direct USAC to consider “clear and convincing evidence” that shows a reseller’s wholesale provider already contributed on the subject revenues.⁶ To that end, AT&T agreed to review its revenue filings and identify its IVANS-derived revenues reported in its contribution base. AT&T provides that information in the attached confidential spreadsheet.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.⁷ For materials not subject to *Critical Mass*, *National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.⁸ The first prong asks whether disclosing the information would impair the government’s ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempted from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by AT&T falls within Exemption 4.

The revenue information being provided to the Commission is not customarily released to the public, is maintained on a confidential basis, and is not ordinarily disclosed to parties outside the company. Disclosure would subject AT&T to substantial competitive harm.

⁶ AT&T Comments at 3 (quoting *Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780, ¶ 44 (2012)).

⁷ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (*Critical Mass*).

⁸ *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) (*National Parks*).

This revenue information was included in AT&T's FCC Form 499 filings, which the Commission and courts previously determined to be the type of competitively sensitive material that should be withheld under Exemption 4. *See, e.g., Skybridge Spectrum Foundation v. FCC*, 842 F. Supp.2d 65, 81-82 (D.D.C. 2012) (upholding FCC's withholding of revenue data on Forms 499-A and 499-Q); *John E. Wall*, 22 FCC Rcd 2561, 2562 ¶ 3 (2007) (withholding Form 499-A data); *The Lakin Law Firm*, 19 FCC Rcd 12727 12729-30 ¶ 6 (2004) (withholding data that would enable competitors to estimate carrier revenues). Telecommunications revenue information is among the most competitively sensitive information maintained by AT&T. AT&T's competitors could use these confidential and proprietary revenue data to target particular markets and to more effectively interact with new or potential customers, thereby enhancing their competitive positions, to the detriment of the competitive position of AT&T. Moreover, the Commission has provided the assurances that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."⁹

The foregoing information plainly pertains to AT&T's commercial and financial interests. It is, therefore, sensitive competitive information.

(4) Explanation of the degree to which the information concerns a service that is subject to competition.

The information being provided to the Commission involves telecommunications services provided by AT&T in competition with other carriers. Telecommunications is a highly competitive industry, and AT&T's services are subject to significant competition throughout the country. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by AT&T should compel the Commission to withhold the information from public disclosure. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazer v. U.S. Forest Service*, 97 F.3d 367, 371 (9th Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

The revenue information produced is treated on a strictly confidential basis and, pursuant to AT&T internal operating standards, practices, and procedures, would not ordinarily be disclosed to parties outside the company.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.

The revenue information at issue is treated on a strictly confidential basis and would not ordinarily be disclosed to parties outside the company. None of the information designated by AT&T as confidential is public or would ever be made public by AT&T.

⁹ Confidential Information Order at ¶ 8.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

The confidential spreadsheet should be withheld from public disclosure as long as the information in question would provide a basis for competitors to gain insight into AT&T's internal business operations and derive competitive benefits therefrom. AT&T cannot determine when this information would become "stale" for such a purpose. Thus, the material should be kept confidential indefinitely.

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

Under applicable Commission and court rulings, the subject material must be kept free from public disclosure. Exemption 4 of the FOIA shields information which is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. *See Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 252 (D.C. Cir. 1982). The subject material clearly satisfies the first two elements of that test. With respect to the third element of that test, information is considered to be "confidential" if disclosure is likely to (1) impair the government's ability to obtain necessary information in the future, or (2) harm substantially the competitive position of the person from which the information was obtained. *National Parks*, 498 F.2d at 770. For the reasons stated above, disclosure of the subject material would plainly satisfy that part of the test. Indeed, the Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs and pricing plans, which is precisely the kind of information at issue here. *See In re Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).

Should you have any questions please contact me. Thank you for your attention to this matter.

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

Attachments

cc: Chin Yoo

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

**Universal Service Contribution Methodology, Request for Review by IVANS, Inc. of
Decision of the Universal Service Administrator; WC Docket No. 06-122**

DECLARATION OF JAMES F. DIONNE

I, JAMES F. DIONNE, do hereby, under penalty of perjury, declare and state as follows:

1. My name is James Dionne. I am an Assistant Vice President – Accounting with AT&T Services, Inc., a wholly owned subsidiary of AT&T Inc. In this capacity, I was and am familiar with the filing of AT&T Corp.'s FCC Forms 499-A and 499-Q with the Universal Service Administrative Company. Specifically, I am responsible for reporting AT&T Corp.'s revenues on its FCC Forms 499-A and 499-Q.
2. In comments filed with the Commission in WC Docket No. 06-122 on September 16, 2013, AT&T stated that it would review the revenues AT&T Corp. reported in its contribution base that were associated with its sale of service to IVANS, Inc. Attached to this declaration is a confidential spreadsheet containing the results of this analysis by quarter.
3. I hereby certify that the statements provided above are true and correct to the best of my knowledge.

Dated: _____

4/28/15

Name _____



CONFIDENTIAL SPREADSHEET

REDACTED - NOT FOR PUBLIC DISCLOSURE